THE LEGAL DEGREES OF MARRIAGE STATED and CONSIDERED, IN A SERIES OF LETTERS TO A FRIEND.

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THE LEGAL DEGREES OF MARRIAGE STATED AND CONSIDERED, &c.

LETTER I.

SIR,

YOUR requeſt is made with ſo exact propriety, that it needs not the leaſt apology—indeed as my opinion of the ſubject on which you did me the honor to conſult me, proves to be different from the general received ſentiments of the legal world, I ought to thank you for giving me the opportunity of explaining myſelf at large, as hereby

either I may vindicate my own judgment, or the ſource of my error may be detected.

The prejudices of mankind on religious topics, are ever deep-rooted, and difficult to be ſhaken,—they are handed down from father to ſon, without the leaſt examination,—and are taken for the moſt ſerious truths, when they cannot ſtand the fire of argument —hence I conceive it to be, that the very important ſubject of Marriage, with regard, to thoſe perſonal prohibitions of intercourſe between the ſexes, which have oppreſſed ſo many, and prevented ſo much happineſs, has been ſo little diſcuſſed, and remains even in theſe enlightened days, burthened with the abſurdities of crafty and deſigning prieſts,—and ſhocking to the liberal mind, each time it is reviewed—

I am hereby induced to think that a candid reconſideration of the matter will have its uſe.—Should the attempt to reduce matrimonial prohibitions to the ſtandard of rational law and ſound policy, be attended with ſucceſs, what a vaſt accumulation of happineſs would enſue!—Should the attempt be fruſtrated—

trated—there can be no miſchief derived from making it—

Under the influence of theſe ſentiments it was, that I told you, I could ſee no objection to your intended application to the legiſlature,—for though the explaining the ſubject would be attended with trouble, yet it would be attended with the happy circumſtances of reſcuing the mind of man from the illiberal abſurdities of papal relicts,—and would adminiſter peace, and happineſs to numbers, whoſe natural liberty is now unwiſely reſtrained, and who therefore were entituled to call upon the legiſlature, for relief, at the expence of any trouble.—Indeed I went further, and told you, that if the legiſlature ſhould not interpoſe, that my ſincere opinion was, that the temporal courts would give relief in many more inſtances than was generally ſuppoſed,—for that the law, when fairly expounded, was by no means ſo rigid as it has been repreſented, on a partial and prejudiced view of it.

To vindicate theſe general concluſions, I ſhall now conſider the ſubject of your caſe, under two general queſtions.

1. It

I. Is the Marriage, ſolemnized between a man and his deceaſed wife's full ſiſter legally valid and unimpeachable?

II. Would an application to parliament be proper, to explain the ſubject of Marriage, and relieve it from the intricacy in which it has been long involved?

This ſubject is not the mere creature of policy,—it has its foundation in nature,—and the law of nature has fixed certain limits, as degrees, within which, parties ſhould not intermarry.—The ſhades of political inſtitutions have much obſcured theſe great outlines of nature,—but ſtill in the diſcuſſion of the queſtion, it will be proper to reſort to theſe original principles, in as much, as they are eternal, and deciſive unleſs the cleareſt declarations of poſitive law can be oppoſed to them.

Having deſcribed the principles of natural law, on the queſtion of matrimonial prohibitions, I ſhall paſs on to a conſideration of the particular caſe before me, as regulated under the Jewiſh and Chriſtian diſpenſations—

from

from whence the tranſition will be with advantage to the poſitive ſyſtem of our own country.

1. To deſcribe the principles of natural law, applicable to the queſtion.

The fundamental truth, on which all rational law is built, from whence all human rights are derived, and to which all controverſies reſpecting them muſt be referred, is this:—

Let man ſo conduct himſelf, as to ſecure his own happineſs, without invading the preſent, or future happineſs of another.

It is impoſſible that this propoſition can be diſputed,—it would therefore be miſpending time, to demonſtrate it—it carries internal conviction.

While the mind contemplates this theorem it reſolves, that all perſons whoſe marriages would diſturb the general ſyſtem of happineſs calculated by nature, and which would level diſtinctions, or confound duties, the obſervance of which promote the welfare of man, are forbidden to form the conjugal union.

Beyond

Beyond ſuch degrees it follows neceſſary, that any two perſons of the ſexes, may connect, and conſtitute the happy relation of huſband and wife.

To inveſtigate theſe relations, wherein two people ſtanding are incompetent to marry, it may be proper to conſider the natural ſtate of man, as to the ſeveral relations in which he ſtands, the conſequences reſulting from them, and the duties attending them, the obſervance of which promotes the happineſs of man, and the departure from which occaſions the contrary.

The natural relations of man are, parent and child, brother and ſiſter, perſons in the various degrees of conſanguinity and friendſhip.

The relation of parent and child is the graveſt of all, and the moſt ſolemn duties reſult from it—the obſervance of which lays the foundation of human happineſs,—and the violation of which begets the various ſpecies of human miſery.

Parental

Parental authority and filial piety promote the nurture and education of the child, and the heartfelt joy of the parent;—by the firſt, the intemperance of youth is juſtly reſtrained, his defective inexperience is ſupplied, and his excreſcent warmth moderated—by the latter the cares of life are relieved, and the bitterneſs of old age ſweetened;—and as the child advances in life, the awful diſtance at which he has been wiſely kept diminiſhes, and this relation is mellowed into the pureſt, and moſt endearing friendſhip.

Here is a ſource of human happineſs!—what wretch dare diſturb it!—

But once admit the daughter to the arms of her father,—let the ſon once aſcend the mother's couch,—parental authority and filial piety will be confounded and loſt in the luxurious warmth of conjugal attraction.

Nature therefore in this inſtance loudly forbids the banns,—her ſyſtem would be entirely diſturbed, her laws groſsly violated, were the father permitted to ſtoop ſo low, or the ſon allowed to preſume ſo high, as to approach to

equality with his daughter or his mother—— To preſerve the happy conſequences of the relation the diſtinction muſt not be levelled—even in a ſingle inſtance.

The charities of brother and ſiſter are another ſource of human happineſs—the perſons compoſing this relation are concerned, in comforting the common parents, in promoting the peaceful harmony of the family, and in continual acts of mutual friendſhip and endearment——

The brother is bound to protect the honor and virtue of his ſiſter,—ſhe on her part to return his love, by every inſtance of affectionate regard—and in the growth of virtuous females all human happineſs depends——

Let Hymen light his torch,—let ſenſual Love, be once admitted,—every houſe will become a brothel, and the rage of paſſion will repel all thoſe charities, the obſervance of which Nature has preſcribed, as a ſecurity of general happineſs.—Here violence would be offered to the law of Nature,—and Reaſon condemns the marriage.

The

The elder kinſman, immediately connected with the parent—as the uncle or the aunt,—are entituled to particular reſpect from the nephew or the niece——To their protection the infant child may be conſigned if an untimely death take off the parent. They are often concerned with the nurture and education of the child.—The argument againſt a marriage between the parent and daughter, in ſome degree, (though not ſo cogently) applies to enjoin the uncle againſt a marriage with his niece,—that due reſpect and authority may always be preſerved between them, and that the anxious care of the uncle may not be exchanged for conjugal attachment, or the duty of the niece ſuſpended for the familiarity of the wife—leſt hard neceſſity ſhould ſometime require the uncle to aſſume the father, and for the ſake of the orphan to exerciſe parental authority.

Beyond this relation, I know of no reſtraint,—I can conceive no duty ſubſiſting, or any relation, the good effects of which may not be heightened by a more intimate union.

The particular inſtance of a marriage between a man and his deceaſed wife's ſiſter,

can never be preſumed to be unnatural, or bad.—What duty can be confounded?—What violence offered to human happineſs?—Many conveniences may reſult from it.—Experience teaches us, that the aunt, however kind as ſuch, becomes the more affectionate mother-in-law;—the ſevere loſs of the huſband is in ſome degree mitigated,—and the hope of her children being tenderly bred, comforts, in the moment of departure, the expiring mother.

This relation adds to the maſs of human happineſs—Nature approves and encourages it—natural law adds its ſanction, and the feeling heart laments the rigour of ſuch poſitive ſyſtem as forbids the union.

The principles of natural juſtice ſeem to be deciſive in your favour—the argument I have uſed brings conviction to my mind—'tis perfectly ſimple—it receives, as agreeable to Nature, thoſe rules, which enjoin and promote happineſs;—it rejects all ſuch as tend to create miſery, or to diſturb the comfort and felicity of man,—and by this mode of reaſoning all abſtracted truths muſt be collected.

I have

I have purpoſely avoided the argument urged by many naturaliſts againſt perſons too nearly connected intermarrying, drawn from the degeneracy of the offspring which may enſue ſuch marriage.—I cannot find (though I think it very probable to be ſo) that hiſtory and experience warrant that argument in the inſtance of the human race,—though all ſportſmen will inform us, that ſuch obſervation prevails throughout the reſt of the animal creation.—If it prevails with us alſo, it adds force, and corroborates our theory, in the inſtances of prohibitions—and no way affects the particular inſtance in which I contend for the rectitude of the marriage.—I choſe therefore to adopt what I take to be rigidly certain, and not ſpeculate on the ground of probability.

I deſire too that you will remember, I have been inveſtigating general principles of abſtracted law;—particular exceptions may be oppoſed to me, in particular inſtances; but all true philoſophy is raiſed on the general ſtate of things.

But now, our adverſaries will be ready to call me to a ſtrict account.—I ſhall be told,

told, what ſignify theſe abſtracted reaſonings—

The law of God ſupravenes your concluſions.

The canon laws of England render their operations ineffectual.

Poſitive acts of parliament contradict you, and authoritative adjudications, have ſettled the laws of England on the other ſide; ſo that however right you may be in prohibiting ſome degrees of relation the privilege of Marriage, yet you indulge others, who are prohibited by the above authorities.

But if I have been ſucceſsful in the argument hitherto, I am confident as to the reſt,——and the very minute examination which I will give to each of theſe heads of objection, will, I hope, prove that the law of God does not ſupravene my concluſions, nor the poſitive ſyſtem of Engliſh prudence ſtop the free operation of natural juſtice—

This

This will lead me into ſome length of diſcuſſion, and of the ſecond and third heads under which I arranged the ſubject, and for this, I ſhall beg your patience till the enſuing poſt.

I am, &c.

J. A.

LET-

LETTER II.

SIR,

THE oftener I review the argument of my laſt letter, the better founded the concluſions of it appear to be—nevertheleſs, however confidently I have expreſſed myſelf, I hope that you will do me the juſtice to believe that I am ever ready to ſubmit my thoughts to the correction of riper underſtandings—With this apology premiſed I proceed to conſider how our ſubject ſtands affected by the laws of England, under which general deſcription I include the divine revealed law—the eccleſiaſtical canons—and the common law of the land—

The divine revealed law muſt be derived from the Moſaical and Chriſtian diſpenſations, and not from the particular experience of individuals in the primitive ſtate of the world, when the paucity of mankind might warrant certain inſtances of conduct, which cannot be

be recommended, or even juſtified in a later time.

The Moſaical inſtitutions were calculated for the government of a nation, and the Chriſtian Morality is immutable and eternal; —from theſe ſources mankind muſt trace the divine will—and when theſe guides fail them, their own natural faculties muſt direct their wandering ſteps.

To theſe fountains I have reſorted to diſcover the divine law of marriage, but after the moſt impartial and diligent enquiry, I cannot diſcover any preciſe degree of relation aſcertained by Scripture, as the limit of matrimonial intercourſe.—I am in this place well aware, that moſt readers of divinity will refer me to the 18th chapter of Leviticus, to ſatisfy my doubts, and ſeem amazed that it ſhould have eſcaped me.

Indeed it is a prevailing opinion, and has been received for ages, that the Levitical law is the ſtandard of legal and inceſtuous marriages; but from my earlieſt attention to this ſubject, I ever entertained my doubts of the ſolidity of that opinion, and am now fully con-

vinced that *that* chapter contains no prohibition of marriage, but leaves the ſubject at large;—Adultery was in that place the object of the inſpired legiſlator, and not a ſingle expreſſion throughout the whole ſection will warrant the application of thoſe rules to the ſubject now under conſideration.

The occaſion of my early doubt was this—If the law of marriage is the object of the 18th chapter of Leviticus, how can the 16th verſe of it be reconciled with the 5th and ſubſequent verſes of the 25th chapter of Deuteronomy?—By the former, the marriage of a man with the widow of his late brother, would be prohibited—by the latter, the ſame match is ſtrictly enjoined.—Divines endeavoured to reconcile the ſeeming contradiction by ſaying—that the latter command was, an indulgence, favourably granted to preſerve the brother's line;—but how ſhocking and monſtrous does ſuch argument appear, if we are to conſider the law of the 18th of Leviticus as the eternal law of God—if we are to conſider the intercourſe of theſe parties as eſſentially wicked, and abſtractedly immoral! What, ſhall the trifling accident of a brother's death without iſſue, induce the wiſe Creator

of

of the world to diſpenſe with moral law, and tolerate impurity? — My ideas of the God whom I adore, forbid me to receive with patience ſuch argument.

At length, a work entituled "*The Caſe of "Marriages between near Kindred particularly "conſidered*," fell into my hands—I admired the book, and found great ſatisfaction in the peruſal of moſt parts of it; but being entirely ignorant of the Eaſtern languages, I applied to an eminent and learned divine, and through his means procured the interpretation of the text of Leviticus from one whoſe maſterly acquaintance with the Hebrew languages is known and revered in every learned ſociety.—I will leave you to judge what were my feelings, when I found a gentleman of ſuch diſtinguiſhed abilities referring me to the above pamphlet, as being the moſt correct and accurate comment on that chapter to be any where found.—I could here with the greateſt pleaſure refer you to that book, but, for your convenience, I will inſert the ſubſtance of his interpretation.

The term which has occaſioned the miſtake, is, the rather indelicate one of "*Thou ſhalt*

" *not uncover the nakedneſs*," &c.—This term the learned author of the work above cited, obſerves, is never uſed throughout Scripture to ſignify *marriage*, but the contrary expreſſion is always uſed in the caſe of marriage—viz. *ſpreading a ſhirt over a woman, and covering the nakedneſs*.—He elucidates this by many inſtances in the holy ſcriptures, and from thence concludes, that uncovering the nakedneſs muſt mean, wanton and luxurious intercourſe; but the purity of conjugal relation is alone to be expreſſed by the figurative expreſſion of *covering the nakedneſs*;—and he authoriſes theſe concluſions by many citations from Dr. Hammond, Mr. Poole, and other learned commentators.

The 18th chapter of Leviticus I receive now as the law of adultery, and ſeeing it in that light, all difficulty is removed, the ſerious mind is freed from the paroxyſm of pain, which it ſuffers, in hearing an attempt made to reconcile the ſeeming contradiction by ſuppoſing God the author of evil.—And the text of the 25th chapter of Deuteronomy ſtands an unimpeachable authority to prove the ſanctity of a marriage ſolemnized between a man and his late brother's widow.

I ſhall

I ſhall here ſpend a little time in diſcuſſing ſomewhat particularly the caſe put in Deuteronomy, for a reaſon which will appear in good time.

I hold this text to be a deciſive authority to ſhew the validity of a marriage ſolemnized between two perſons ſtanding in the degree of brother and ſiſter in law;—if there be no iſſue of the firſt marriage, this contract is expreſsly commanded;—and I hold the argument to be found, that is derived from hence to prove, that if there be iſſue, it is ſtill *lawful*, though not *commanded*.—I agree that the letter of the authority does not warrant this idea, but I contend, that the principle of it does.

What difference can the circumſtance of children make?—What impurity can be occaſioned by the exiſtence of a third perſon?—Reaſon can point out none!—there being children may be a ground for with-holding the poſitive command, but cannot weigh a feather in the ſcale of juſtice to induce an opinion, that the match would be impure—for *cohabi-*

tation

tation and *copulation*, make no difference in the caſe, they are not mentioned as terms in the general order.—If therefore every degree of intimacy may have paſſed, if there may have been children who happen to die before their father, and yet the marriage be good,—why can the circumſtance of thoſe children ſurviving their father create a difference?—In my apprehenſion it is impoſſible there can be any!

I draw therefore my general concluſions with confidence, and venture to aſſert, that the divine revealed law, warrants the intermarriage of any two people ſtanding in the degree of brother and ſiſter-in-law.

As a corollary it follows, that the marriage of one with his late wife's ſiſter, is valid—for they are in the ſame relation, and no objection can be urged to one, which cannot be directed to the other;—and it is an eternal truth, that, where all circumſtances exactly concur, there muſt be the ſame meaſure of right and wrong.

But here I ſhall be oppoſed by two or three texts of Scripture, derived from the Chriſtian doctrine:—

doctrine:—they are worthy my conſideration, though the force of them will be eaſily repelled.—(I entirely paſs by the arguments which are produced againſt theſe near affinite connections, founded on the idea of *a man and woman* being *one fleſh in marriage*; this is merely figurative and political, and ſuch objection muſt be anticipated by what I have already written, *if I have been ſucceſsful.)*

The firſt of the paſſages in the New Teſtament is in the 14th chapter of St. Matthew's Goſpel, verſes 3. and 4. wherein St. John the Baptiſt is reported to ſay unto King Herod, "It is not lawful for thee to have Herodias, "thy brother's wife."

The ſecond is in the 1ſt of St. Paul's Epiſtles to the Corinthians.

As to the latter of theſe I ſhall leave every man in full poſſeſſion of it, without any remark of mine.

The former can afford no ſerious objection, when it is recollected that Philip, the brother of King Herod, was alive at the time—when the

the infamous tyrant glutted his luſt, in the rank ſtew of adultery—and this too at a time, when his own wife was yet alive.

St. John does not therefore allude to marriage—he condemns adultery;—how can that apply to the matter before us?

But now let us remember, that the text of Deuteronomy is impliedly confirmed by the firſt authority—by no leſs authority than that of the founder of our religion—of Chriſt himſelf——The ſubject of marriage between a brother and ſiſter-in-law is propoſed to him, —he no wiſe objects to it; and though he does not expreſsly ſay it is lawful, yet from the text it is clear, that he by no means diſapproves it.*

I know of no objection therefore to the legality of a marriage ſuch as we are treating of, that can be adduced from the divine revealed law.

What poſitive conſtitutions the Jewiſh nation had, in regulation of this ſubject, I do not

* See 22 Matt. *v.* 24.

not enquire; they are no more obligatory in this country, than the edicts of the Mogul, or the decrees of a Roman Prætor.

It will now be aſked, if this reaſoning be well-bottomed, how came theſe miſtakes—from whence ſhould it ariſe that the laws of Moſes ſhould be ſo wretchedly underſtood, and Chriſtianity adopt the miſtake, and ſuffer it to prevail ſo long——'Tis impoſſible for me to account for this—happy, if I have been enabled to draw juſt concluſions, I ſhall not ſpeculate on the origin of abſurdity.—Yet, it may be as well obſerved, that the later Rabinical writers were known to be moſt completely ignorant of their own laws,—and the lucrative doctrines of diſpenſation early induced the church of Rome to catch at every ſeeming prohibition, for the purpoſes of aggrandizing its own wealth, and extending its accurſed domain.

LETTER III.

SIR,

TO thoſe cauſes, with a recital of which my laſt letter concluded, we muſt originally attribute the lamentable corruption of the ſimplicity of Nature and of Revelation. But afterwards,—the ruin of the Roman empire,——the abject ſlavery of one, and the rude barbarity of the other parts of the world —the convulſions throughout Europe, and the conſequent growth of *papal* authority, produced a new ſyſtem of juriſprudence, generally ſtiled the *Canon Law*, compoſed of expoſitions of Scripture accommodated to the particular intereſts of deſigning churchmen ——abounding with impoſitions illiberally ſhackling the human mind — aſſerting the infallibility of him whoſe will ſanctified theſe enormities, — and attended with the moſt inſolent exerciſe of power, in the form of bulls, decrees, interdicts, licences, and diſpenſations.

In

In days of ſuch ſuperſtition you will not wonder that the liberal doctrines of rational law ſhould be overwhelmed by a maſs of monſtrous abſurdity,—that the purity of marriage ſhould be impiouſly polluted.

I feel much pleaſure in the thought, that 'tis not neceſſary, and would be improper to purſue this ſubject particularly—the object of our enquiry being the legal degrees of marriage, as now eſtabliſhed by the laws of England; and of courſe the whole of *the Canon law*, which can affect the argument, muſt be that part of it, which is *now* of force in this realm.

I ſhall therefore ſtate, and that in few words, of what general authority *the Canon law* is in England,—and then examine the legal degrees of marriage under that authority.

The whole body of the Canon law, by long uſage, and under the ſanction of the Pope's ſpiritual dominion, was certainly of obligatory force in England, prior to the time of the Reformation—but the extreme hardſhip,

and abſurdity of it, joined to the ſpirit which prevailed at the time, happily produced the ſtatute of 25 Hen. VIII. c. 19. which is the ſtandard to which every Canon muſt be referred for the determination of its authority —for though that ſtatute expired, was revived, continued and repealed ſeveral times during the remainder of that Prince's reign, and the ſubſequent reigns of his ſon Edward, and daughter Mary, yet it was finally eſtabliſhed by a ſtatute paſſed in the firſt year of Queen Elizabeth;—To that ſtatute, therefore, I ſay we muſt reſort, to fix the ſtandard of canonical authority.

The ſubſtance of it is this:—

After a recital of the many inconveniences which had enſued the free operation of the body of Canon law, it empowers the Crown to appoint a commiſſion, to re-conſider the code, and to adopt or reject ſuch parts as may appear proper to be ſo received or rejected, as being conſiſtent with the laws and conſtitution of this country;—and which code ſo compiled by theſe Commiſſioners, is to be referred to the Crown for its authoritative ſanction,

and

and having received it, is to be of force *as the Canon law of England.*

The ſtatute then provides, that "until "ſuch review of the Canons at large ſhall be "taken, ſuch of them *already made*, which "will not be contrariant or repugnant to the "laws and ſtatutes, and cuſtoms of this "realm, nor to the damage or hurt of the "King's prerogative royal, ſhall now be ſtill "uſed and executed." The multiplicity of affairs which engaged the attention of King Henry VIIIth's later days, will account for this work having never been ſet on foot during his time;—it was begun, and the reformation of the code completed juſt before the death of the excellent young King, his ſucceſſor, whoſe untimely end deprived it of the royal confirmation, and therefore takes off the authority of the work entituled, "*Reformatio Legum* "*Eccleſiaſticarum*".—Queen Mary, on her marriage with Philip, became an impious bigot to the church of Rome, and of courſe ſtopt all progreſs in the buſineſs; and her ſucceſſor had, like her father Henry VIII. too many objects of her attention, to beſtow any part of it on the correction of eccleſiaſtical law—

though

though her firſt ſtep in government was to re-found the principles of all reformation by a repeal of Queen Mary's laws, and a revival of thoſe which had been pointed againſt the *papal tyranny*.

The enquiry therefore, in every eccleſiaſtical ſubject muſt be, whether *the Canon* affect the royal prerogative, or be repugnant to the laws and ſtatutes of the realm?—And whether it be an antient canon, anterior to the paſſing the act of 25 Hen. VIII.—By ſuch affection the validity of the canon muſt be decided—for it is now certain, (and I ſpeak it with the greater degree of confidence, becauſe ſuch is the judicial opinion of that conſummate lawyer the late Lord Hardwicke) that no canon, ſince the reformation, can bind the nation at large, without the authority of parliament,—and I believe there are no *legiſlative acts* ſince that period which operate to give force to any ſingle eccleſiaſtical rule.

The above opinion is *judicially* propoſed by his Lordſhip in the celebrated deciſion between *Middleton and Crofts*, which I ſhall take occaſion to ſtate in due time, very particularly, becauſe much argument will be de-

rived

rived from *that* authority, to evince the truth of my preſent concluſions.

I proceed, therefore, to conſider the acts of parliament which have paſſed, and are now in force, to limit, or declare the degrees of matrimonial prohibition,—and theſe are 32 Hen. VIII. c. 38. and 1 Queen Mary, ſeſſ. 2. c. 1.*——The latter of theſe will require a very attentive conſideration—the ſubſtance of the former may be thus ſtated—" Every " marriage conſummated by carnal know- " ledge and iſſue, ſolemnized between perſons " not prohibited *by God's law*, ſhall be in- " diſſoluble, and no prohibition ſhall operate " (God's law except) to impeach any marriage " without the Levitical degrees."

By this act, moſt clearly the degrees of proximity ſpecified in the 18th chapter of Leviticus,

* The author is aware of two other acts of parliament, on the ſubject of marriage, paſſed in the time of King Henry VIII. viz. 25 Hen. VIII.—28 Hen. VIII. but he apprehends both of them to have been neceſſarily repealed by 32 Hen. VIII. which was intended by the legiſlature of thoſe days to contain the limits of legal matrimony.

viticus, are aſcertained as the legal degrees of marriage in the divine law, and on that idea, the table hung up in churches, and the 99th canon in 1603, were calculated.

If, therefore, there were no other ſolemn act of legiſlation in the way, I muſt in this place have ſubmitted to the force of the poſitive law, and have acceded to the propriety of that table, which I ſhall now controvert, on the authority of the next act of parliament, which I will ſtate with many obſervations.

1ſt, For the purpoſes of ſhewing the full extent of the ſame, the ground on which it proceeds, and the effect which it neceſſarily has on the ſubject of my letter;* and 2dly, becauſe a want of attention to it has produced the error (if I may be allowed to ſay ſo) into which ſo many ſeem to have fallen;—indeed ſo little have lawyers and civilians thought of this act, that I do not find it printed in any collection of the ſtatutes to which I have referred, except the laſt, *by Mr. Pickering*, though it is recognized

* This act may be ſeen in the Appendix to Pickering's Edition of the Statutes, 1 Mary, ſeſſions 2. c. 1.

recognized as *ſtill continuing unrepealed*, by Dr. Gibſon† and Mr. Cay.‡

The act paſſed the legiſlature for the purpoſe of declaring the marriage of King Henry VIII. with his firſt Queen, *Catherine, the widow of his brother Arthur*, to be agreeable to the divine revealed law, and perfectly conſonant to Scripture.—It ſets out with an aukward kind of rhapſody on the nature of truth, and then recites, That the parliament perfectly underſtanding the *very truth of the ſtate of matrimony*, between the two moſt excellent Princes King Henry VIII. and Queen Catherine, and the ſeveral tranſactions of the divorce of them, (which the act deſcribes to be through the wicked intrigues of Cranmer and others) proceeding from the *miſunderſtanding of Scripture*;—and further, that *the ſame marriage in very deed not being prohibited by the law of God, could not by any reaſon or equity in this caſe be ſo ſpotted*,—and conſidering, *that the ſaid marriage had its beginning of God, and was and is to be taken for a moſt true, juſt and lawful marriage, and to all reſpects a ſincere and perfect one, nor could nor ought, by any man's*

 power,

† See Codex, vol. I. p. 495.

‡ Collection of Statutes.

power, authority or jurisdiction, be dissolved, broken, or separated, &c. therefore it is enacted, *that the marriage had and solemnized between Henry VIII. and Queen Catherine shall be definitively, cleerly and absolutely declared, deemed and adjudged to be, and stand with God's law and his most holy word, and to be accepted, reputed, and taken of good effect and validity, to all intents and purposes.*

On this act of parliament the following observations occur:—

1st, It is a solemn, public, notorious, *legislative declaration,* of the purity of a marriage solemnized between a man and his own brother's widow.

This observation will relieve it from the *possible* objection of being a confirmation of a *particular* marriage, through the medium of legislative *omnipotence.*

2dly, The whole tenor of the act shews, that the legislature proceeded on the ground of the marriage being perfectly righteous in the eyes of God, and agreeable to the divine revealed law.

This

This obſervation *appears to me*, to anticipate any objection which may be made againſt the preſent obligation of the act, on the idea of the marriage being ſolemnized under the ſanction of the *papal licence*.

No ſuch idea can be derived from the moſt rigid conſtruction—but the contrary is evinced in every clauſe of it;—for if it proceeded on the opinion of King Henry's marriage with Queen Catherine being made lawful by the *impudent uſurpation* of the See of Rome,—it ſhould impliedly admit, *the thing to be contrary to God's law*, which, in that inſtance, had been *diſpenſed* with by his Holineſs—but it expreſsly declares it to *be agreeable to God's law and his moſt holy word*,—and therefore, in my underſtanding, obviates the force of the objection.

I wiſh to inſiſt on this obſervation, the more becauſe a candid and learned friend ſtarted the above objection in converſation, and it might therefore have occurred to others;—indeed if it could prevail, there would at once be an end of my argument derived from the authority of the

act, becauſe that which has been legitimated on the foundation of *papal abſurdity*, muſt now be no longer received as lawful, ſince ſuch abſurdity has been happily exploded by the higheſt authority, in a ſubſequent time.

This obſervation further anticipates *any poſſible* objection ariſing from a ſuppoſition of the marriage between Prince Arthur, the brother of King Henry VIII. with Queen Catherine, not being *conſummated*—becauſe *copulation, and cohabitation*, were found to be no conditional terms in the divine revealed law, on which the marriage of a man with a brother's widow was allowed;—the act therefore proceeding on the divine law, could not adopt ſuch circumſtance, as the term of legality—nor are we to adopt it for the legiſlature (it not appearing on the face of their act)—who profeſs to obey that law, which does not make the diſtinction ſuppoſed.

Beſides, the circumſtance of conſummation is made doubtful in hiſtory,—to me it ſhould ſeem certain;—the Prince was turned of ſixteen,—his wife full eighteen years of age.

3dly, This

3dly, This act of parliament is ſubſequent to, and explanatory of the 32d Henry VIII. whereby many difficulties under that ſtatute are removed.

This obſervation goes a great way, and will bring me to a more particular diſcuſſion of the ſtatute of King Henry VIII. which I purpoſely reſerved for this place, that in the courſe of my reaſoning on this head I might obviate certain objections, which I have reaſon to ſuppoſe will be ſet up in argument againſt the preſent obligation of the ſtatute of 1ſt Mary.

I have already ſtated the ſtatute of Henry VIII. ſubſtantially.—The ſpirit and policy of that act was certainly to reduce the law of marriage to the juſt regulation of divine and natural law, in oppoſition to the enormities which occurred, whilſt it was ſubject to eccleſiaſtical ſeverity.

This is moſt evident from every expreſſion in the courſe of the act.—All perſons are declared by it competent to intermarry, who are competent thereto *by God's law.*

At the time this act paſſed, the degrees of relation, as ſpecified in the 18th chapter of Leviticus, were conceived to be, *by the law of God*, the legal degrees of marriage; and therefore all marriages, without thoſe degrees, are declared to be exempt from any ſpiritual prohibition.

I contend that the ſentence, wherein the Levitical degrees are mentioned, proceeds upon the idea of thoſe degrees being, by *divine law*, the legal degrees of marriage, and are adopted by the legiſlature, as *illuſtrations* of the law of God, and not made the limit of legal marriage *by the political laws of England.*

If the contrary be true, we arrive at this ſtrange concluſion, viz. The act declares all perſons to be competent to marry, but thoſe who are prohibited *by God's law*;—and yet, (ſuppoſing the Levitical, not to be the divine law) allows a marriage to be impeached, which by God's law *may* be good.—I have *noticed* the evident abſurdity of this concluſion becauſe the concluſion itſelf has been ſeriouſly adopted by Sir John Vaughan,* in the caſe of *Hill and Good*, and for the purpoſe of meeting an objection more ſecurely which may occur hereafter.

This

* Vaughan's Reports, 321.

This expreſſion too, *the Levitical degrees*, is a general one;—it is adopted as the *general* law of marriage, and therefore may have *particular exceptions*.—If therefore any inſtance can be put, wherein it may appear that a marriage, though within thoſe degrees, be nevertheleſs divinely legal,—I hold that ſuch marriage would be protected by the 32d Henry VIII. againſt any eccleſiaſtical prohibition.—The argument which leads to this concluſion, is too evident to require it being expreſsly propoſed.

Many lawyers, and thoſe to whoſe better judgment and more enlarged experience I bow with humble deference, ſeem to have fallen into curious reaſoning for want of attending to this conſtruction of King Henry's law.

Sir John Vaughan, in the caſe of *Hill and Good*, above cited, puts many inſtances of marriages, within the Levitical degrees, which are clearly found to be agreeable to the divine law,—and evinced to be ſo, by the regular practice of the Jews, and the authority of the early

early Rabinical writers,*—which he allows to *be lawful marriages*, though liable to eccleſiaſtical impeachment.—Strange reaſoning this!—Can the act legitimate that which it lays open to impeachment?—Impoſſible!

My beſt conſideration of this argument draws me to this conſtruction of the ſtatute:—

Every marriage, which by God's law is valid, ſhall be ſo, in England.—To the divine revealed law we muſt refer, to determine it; and the Levitical law, becauſe it is conceived to be the *divine law of marriage*, is adopted to *illuſtrate* that law by the legiſlature.

If, therefore, you now turn your thoughts to the ſtatute of Queen Mary, you will find it an expoſition of the law of marriage, ſubſequent to the 32d Henry VIII. and a ſolemn legiſlative declaration, of the purity of a marriage, between a man and his brother's widow

* From theſe ſources the author conceives, a *practical* expoſition of the 18th chapter of Leviticus may be derived—for if the regular practice of the Jews contradict the popular conſtruction of that chapter, the concluſion is evident, that ſuch could not contain the law of marriage.

widow by the law of God.—In my mind it naturally follows, that all marriages in that degree, (or in a remoter *á fortiori)* are legally valid,—and the laws of England appear to be perfectly concurrent with divine inſtitution and natural juſtice.

I have inſiſted on this argument to ſo great length, that I might with more ſecurity meet an objection, which, on firſt view appears formidable; and which I will ſtate candidly, and ſubmit my anſwer to it.

The ſtatute of 1 Mary, refers to a marriage ſolemnized anterior to the ſtatute of 32 Henry VIII. and declares it to be pure *in the eyes of God.*——Says the objector, this may be ſo, yet, the act of Mary may not affect the act of Henry, as the *later* ſtatute refers to the law as it ſtood previous to the paſſing of the *former*; —and certain it is, that if the act of 32 Henry VIII. had enacted, that the ſeveral degrees ſpecified in the 18th chapter of Leviticus ſhould be received as the degrees of illegal marriage, *by the laws of England* the objection would hold good;—but as thoſe degrees are adopted (as I humbly conceive) as *illuſtrations of the laws of God,*—and as the

poſterior ſtatute declares *the law of God* to be otherwiſe, I apprehend the objection will not appear ſo formidable now to you, as it did to me when firſt propoſed.

Upon theſe acts of parliament then I rely with ſome confidence,—and truſt, that they, in ſome degree, warrant my aſſertion, that the temporal courts would probably interfere in more inſtances than was generally conceived; for by the authority of theſe acts, the canon law loſes its force,—the table hung up in churches appears a piece of paper, and the 99th canon of 1603, which is the ground on which that table is ſupported, is found to be no wiſe obligatory on the nation at large.—The canon law, ſo far as it is concurrent with the laws of God, of nature, with the acts of parliament, and the law of the land, freely may operate; but the tranſgreſſion of the ſpiritual tribunal beyond that limit, muſt be reſtrained and corrected by temporal juriſdiction.

In this place, I particularly recommend to your conſideration, the caſe of *Middleton and Crofts*,* with Lord Hardwicke's invaluable diſſertation on the *Canon law*;—it ſhews the truth of

* See 2 Atkyns's Reports, in the Appendix.

of my opinion of the authority of that law at this day, and furniſhes many curious obſervations, which ſerve as premiſes, to warrant my concluſions, That the Table of degrees ſet forth in 1563, and ſanctified by the 99th canon, hath no obligatory force, at this day, on the nation at large.

But to this general reaſoning I feel oppoſed the authority of ſeveral adjudged caſes ſpeaking a different doctrine, of which I am perfectly aware, and on which I muſt now beg leave to make a ſhort comment.

The three moſt remarkable are—

Harriſon and Burrell;*

Hill and Good;†

Butler and Gaſtrill.‡

It is not neceſſary that I ſhould particularly ſtate the caſe, and the reaſons of each deciſion.

* Vaughan's Reports, 206.
† Ibid, 305.
‡ Gilbert's Reports, 156.

The firſt aroſe on the marriage of a man with his great uncle's widow.—By the opinion of all the Judges of England it was holden, that this was a lawful marriage, and a prohibition was granted.

This deciſion in itſelf does not contradict my principles,—but the theory on which it was made certainly does.

The general idea,—of canon law being exploded where contrariant to the laws of England, is indeed admitted,—but the ground of the deciſion is, that this degree of relation is *not within the Levitical degrees*, which are all received as *now* of force, and as the legal degrees of marriage.

But no notice is taken by the Judges, of the act of 1ſt Mary.

The two other cauſes aroſe on marriages between a man and a wife's ſiſter, and a man and a wife's aunt.

Both of theſe, on the ſame theory, are holden to be inceſtuous.

There

There are ſome few more caſes in the books, but none of them later than theſe, or of ſo much authority.

On theſe deciſions I remark——

1ſt, That there is no notice taken of the ſtatute of 1ſt Mary.

This has induced an opinion in ſome, that this act is merely a private one,—but to that opinion I have anticipated the anſwer—while the obſervation proves the argument to be inconcluſive; for it ſhews, that a material affection of the propoſition has not been conſidered.

2dly, The argument is bottomed too much on eccleſiaſtical law, and canons indiſputably of no authority are introduced by the ſtrangeſt twiſt of logic to be met with any where.—It is laid down, and *rightly*, in theſe cauſes, and by Lord Coke in his ſecond inſtitute,* that the legality of marriage is dependant on the laws of God.—Then ſay the lawyers,—the canon law is the authoritative expoſition of the law of

* In his Commentary on 32d Henry VIII.

of God—*ergo*, the canon law is to be adopted to expound the law of marriage.

What a monſtrous ſubtilty!

What effect has this reaſoning but to introduce the canon law, with all its abſurdities, into England, in ſpite of 25 Henry VIII.—a ſolemn legiſlative act?—And how cruelly abſurd does it make Engliſh juriſprudence appear, to have the law of the land explained by ſuch circular reaſoning.—The act of 32d Henry VIII. calculated to check the enormities of the canon law on the ſubject of marriage, reduced it to the ſtandard *of the law of God*, which is acknowledged on all hands;—and yet come the logicians, and ſay, the *canon law, which expounds the law of God*, muſt be received as of authority.——'Tis rather too abſurd to be diſcuſſed ſeriouſly; and I feel ſenſibly for human nature, when I ſee *ſuch men* bigotted to ſuch prejudices.—But if the argument of theſe *legal authorities* be thus inconcluſive;—if it be thus deficient and dependant on ſuch reaſoning,—can it be received as obliging poſterity?—And muſt ſuch

Judges

Judges as now fill the higheſt ſeats of judicature accede to theſe prejudices?

It may be ſaid—Yes!—The courts are bound *ſtare deciſis*.—Precedents are authoritative, and, though we may not *always* be edified by the principle, we are bound by the judgment.

I can by no means accede to *this unbounded* poſition.

No man can wiſh more ardently than I do for legal certainty, and yet, Heaven forbid! that I ſhould always tread in the footſteps of my forerunners.

Where a queſtion of mere poſitive law, unconnected with any ſtatute, and not the ſubject of natural juſtice, occurs, there the precedents in our books are the beſt evidence of *general experience*, and therefore ſhould be purſued;—for be it ever remembered, that former deciſions are only evidence of general opinion and experience, and from thence derive their force;—in the language of a lawyer,—they are *evidence of law*;—but, if that evidence be oppoſed by an act of parliament, it loſes its weight,

weight, and the *preſumption* of the legality of the doctrine advanced by *the deciſion*, is ſhaken by the *poſitive proof to* the contrary, *by the act of parliament.*

If therefore the argument of this letter be founded in ſound principle,—the deciſions of our courts cannot impugn it;—and it is without the leaſt ſenſibility that I wiſh to hear the doctrine of thoſe caſes exploded—for no inconveniences can follow their being overruled.

The length of time which has incurred, is too long to bring any title into diſpute, which depends on the authority of thoſe judgments; —and the removal of prejudice and abſurdity is ever the wiſh of an honeſt and free heart.

Thus, Sir, I have complied with your requeſt,—I have ſtated and conſidered the legal degrees of marriage, as I underſtand them, and have given you the reaſons of my opinion at large.—They are *my* reaſons, and the opinion is *my own*—*Nullius in Verba*——I think for myſelf, and freely communicate the re-

ſult

ſult of my thoughts—determined to defend the argument which brings conviction to my mind until its error be detected;—then—as willing to renounce it, as before reſolute in maintaining it.

J. A.

LETTER IV.

SIR,

IF the doctrine asserted and defended in the foregoing letter be well founded, it may appear to some unnecessary to discuss the second general topic—viz. The propriety of an application to Parliament, to have the legal degrees of marriage considered, and precisely ascertained, by legislative authority—but, I still advise such application—at least, I would not have any man rely on my opinion so confidently, as to be secure under the sanction of my little experience, and youthful ideas,—and therefore I shall subjoin some observations on its propriety.

I am not able to raise, in my own mind, one argument against the application;—there are many (which to me appear cogent) in favour of it.—I know, there are some worthy and eminent gentlemen, who think that the interposition of Parliament might create confusion, and that it would be difficult to draw a line with accurate precision;—but to me,

nothing

nothing appears more ſimple:—let Nature be our guide, and let the line be drawn where the concluſions of natural law ſeem to have fixed it, and which I endeavoured to trace in my firſt letter,—Where arguing on moral principles, I concluded that, the relation of uncle and niece, or aunt and nephew, was the beſt limit that could be fixed;—in that place, I confined my *expreſſions* to the degrees of *conſanguinity*—but the principle of the prohibition extends wherever the convenience of family œconomy requires that it ſhould, and thoſe inſtances were neceſſarily implied—as where I *expreſſed* the relation between father and daughter, I implied that of grand-father and grand-daughter, &c. in the aſcending and deſcending lines;—in like manner I would be underſtood to extend it to degrees of affinity, where the ſame reaſoning makes it neceſſary, as in the caſe of a ſon, and his mother-in law, of a nephew, and his aunt-in-law—but I can never be brought to think, that the prohibition ſhould extend to the caſe of a wife's ſiſter,—and thoſe arguments which I mentioned in my firſt letter ſtrike me ſo forcibly, that I am often inclined to wiſh, that the conſummation of ſuch marriage was enjoined in England, as it was of old in Judæa.

Nothing therefore appears to me more eaſy and ſimple, than to conſtitute a marriage table, and give it legiſlative ſanction, by a *declaratory* act.—I prefer that to a new enacting ſtatute, in as much, as a declaratory act would confirm and ſettle thoſe marriages, which have been ſolemnized already, and which, perhaps might be, by intereſted perſons, brought into queſtion, in a courſe of odious litigation if an enacting ſtatute ſhould only protect thoſe marriages in future.

But to ſuch an attempt, it is further objected, that the ſubject is pretty well underſtood, and it may be dangerous to trouble it.

This objection proceeds on the ground of the preſent law being on the other ſide of the queſtion:—I take it to be *clearly* on this ſide: and if ſo, the argument recoils on the objector; for, in order to ſettle the matter, to remove all queſtions, and to relieve the ſubject from its preſent ſtate of embarraſſment,—a ſolemn legiſlative declaration, is particularly requiſite.

This objection is however carried further, and it is ſaid, that to alter the preſent ſyſtem, by confirming theſe marriages, might bring many titles to eſtates in queſtion, which have devolved on the heirs at law, on baſtardizing the iſſue of a *ſuppoſed* inceſtuous marriage.

But the anſwer is manifold.—No ſuch title has veſted within theſe fifty odd years,*—therefore hardly any could be queſtioned in law, ſixty years length of quiet poſſeſſion giving an indefeaſible right againſt all the world;—beſides, the legiſlature might ſafely guard againſt ſuch inconvenience, in their act, by inſerting a clauſe, whereby ſuch titles having accrued for any time, *five* or *ten*, or *any other number of years*, ſhall be holden to be indiſputable.

But there are ſome, who are unwilling to trouble the legiſlature, thinking it not matter of ſufficiently public import, to call upon the Parliament to interpoſe; in as much, as there are but few, ſtanding in near degrees, who have intermarried—and therefore that the *private*

* Of this I am informed by a perſon who has made it his buſineſs to be very exact in the enquiry.

vate grievance may be ſubmitted to.——In God's name why?—Why ſhall *one* individual ſuffer?—If a ſingle ſubject be aggrieved—if natural liberty be unwiſely reſtrained in one *only* inſtance,—it is the duty of rulers to interpoſe and relieve:—on that condition Kings hold their ſceptres, Peers wear their coronets, —and the Commoner enjoys the ſacred truſt repoſed in him by his conſtituents.—But, I deny the number of the aggrieved to be ſo ſmall,—every day brings ſome inſtance to my knowledge, of ſober, ſedate and prudent perſons, who have happily formed the matrimonial union, and yet are fearful, leſt the ſable rod of *remaining ſuperſtition*, ſhould one day, inflict a ſcourging too ſevere for a feeling creature.—But let us give into the miſtake for a moment, and ſuppoſe, the number of thoſe *already* married to be ſmall,—*how many* are they, who would wiſh now to marry;—and who are deterred by the frightful difficulties in which the ſubject is amazed!—What a treaſure of happineſs then is loſt, and how many perſons hereafter would bleſs the day—when the meaſure received parliamentary adoption.—This objection appeared to me too feeble to deſerve an anſwer, until I heard that it had been urged by an eminent perſonage,—now no more,—whoſe memory

memory I would not dare to inſult, by paſſing by any thing, which he judged to be worthy of his notice.

Our opponents would next fright us, with a notion, that the particular inſtance of a marriage between a man and his late wife's ſiſter, ſhould above all be ſtrongly reprobated —and this for political, as well as for moral reaſons.——They ſay, that men, in ſociety, ought to look abroad for wives,—that the conjugal union produces family compacts, the extending of which, forms a chief link in the great chain of ſociety—that, therefore, by prohibiting this marriage, a man will conſtitute new compacts, new relations, and friendſhips, which might be precluded by an intermarriage with his ſiſter-in-law.

This argument would carry the prohibition an immenſe way, and would in a ſhort time be the means of there being *no* competent degrees at all,—by prohibiting any two people, ſtanding in any degree of relation, however diſtant, to encreaſe their charity to each other by a more intimate endearment.—It therefore proves too much.—But to what a cruel degree does it ſcrew up the reſtrictions of natural

tural liberty—to which, no ſtate of ſociety can require it—nor any human inſtitutions warrant.—A man having formed one connection in a ſtrange family, has fully performed *his* duty to ſociety, and ſurely ſhould not be compelled again to go among ſtrangers, in violence to his own happineſs,—frequently, to the miſery of his children, and to the jealouſy and diſturbance of his old and new connections —and this too, when the wealthy miſer, or debauched libertine, are allowed through life to ſtarve, or riot in a courſe of mean, or wanton celibacy.——The ideas of policy are ſoon diſſipated,—for policy can, or ought to reſtrain nature no further, than the happineſs of ſociety may require;—and no argument can be urged to ſhew, that mankind can be made unhappy by a toleration of theſe marriages:—the contrary is evident.——The moral argument is thus propoſed:—Wives' ſiſters often live under the ſame roof with the married couple.—Were the injunction, ariſing from the opinion of the intercourſe being inceſtuous once removed, (as it certainly would be by a legal allowance of their future marriage)—a ſcene of adultery would be ſoon opened,—and domeſtic eaſe be diſturbed by continual intrigues.—

trigues.—This argument alſo proves too much, —for it tends to ſhew, that a man *once married* ought not to live with *any female* whatever —or *any* ſecond marriage muſt be pronounced inceſtuous.—Is it not too abſurd to require a ſerious diſcuſſion?——In God's name,—why ſhould a man be more likely to commit adultery with his wife's ſiſter, than with his fifth couſin, or the dairy-maid who may live with him?—On the contrary, it is far leſs likely that a ſiſter, loving and beloved by the wife, ſhould yield to the addreſſes of a brother-in-law, or he ſucceed in his adulterous effort with her, than with an airy chamber-maid—or more diſtant, and probably leſs affectionate kinſwoman.

But laſt of all we are threatened with the certain oppoſition of prelatical power,—we are told, that their reverend Lordſhips will reject, with indignation, *any attempt againſt the ſacred inſtitutions of the church*, of which I am told this is one.

Heaven forbid, that the bench of Biſhops ſhould ſit tamely by, and behold *a groſs infraction* of the laws of God and of Chriſtianity!—But, if my argument be right, is

this ſuch an attempt?—Is it not rather the direct contrary?—For my part, I conceive it to be a *pious attempt to ſecure man's happineſs*, againſt the influence of the miſerable relicts of the moſt damnable ſyſtem that ever prevailed——the policy of the Church of Rome.

Are we to ſuppoſe their Lordſhips would refuſe to pronounce the purer doctrine of religion, and to reſcue the minds of Chriſtians from the amazement of ſuperſtition—becauſe the prejudices are antient, and the marriage-table is covered with the duſt of antiquity?—Alas! if it were poſſible, that ſuch opinions could prevail,—how would I pity the *lamentable bigotry* of the eighteenth century!—What a miſerable contraſt would it afford with *the bright genius* of the ſixteenth!—If antient prejudices and received opinions had always deſtroyed the *impetus* of argument,—this country, like the reſt of Europe, had long ago been enſlaved—the Reformation—the brilliant Reformation, *would now have been* celebrated as a bold and glorious *attempt* only—and lamented by the pitying heart of liberality as an *unfortunate miſcarriage*.

But

But how *is* it celebrated?—As the nobleſt ſtruggle, gilded with the happieſt ſucceſs, in the hiſtory of Chriſtianity!——How was it produced?—By ſurmounting prejudices—reaſoning by ſound logic, and concluding with free-thinking—and giving full rein and fair play to human underſtanding.—Shall it then now be checked?—'Till I *behold* the preſent attempt fruſtrated by prelatical bigotry, I will not ſuſpect it.—Proceed then, my friend, to execute your intention,—may ſucceſs attend it!—and if theſe looſe and imperfect thoughts of a young mind, ſincerely, though diffidently communicated, can in the leaſt degree give furtherance to your plan, they are at your ſervice, to be employed at pleaſure;—they cannot afford the light you wiſh:—but if they are the cauſe of others thinking of the ſubject, with more accuracy, and judging of it with more ability—they in ſome,—(ay, almoſt in the whole meaſure) anſwer your end—of theſe letters, ſay with the philoſopher, *Præparatione opus eſt, ut res per gradus maturescat.*

F I N I S.